

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARTIN GARDNER REIFFIN,

Plaintiff,

v.

MICROSOFT CORP. ET AL.,

Defendants.

No. C 11-03505 CRB

**ORDER VACATING MICROSOFT'S
MOTION TO DISMISS SAC,
HEARING RE SAME**

Defendant Microsoft Corporation has moved to dismiss Plaintiff's Second Amended Complaint, dkt. 80, arguing that "[t]he allegations against Microsoft in the Second Amended Complaint should be dismissed with prejudice – again," see dkt. 82 at 2. Plaintiff has opposed Microsoft's Motion. See dkt. 85. Microsoft's Motion is now on calendar – along with a Motion to Dismiss filed by Defendants Gates and Ballmer, dkt. 83 – for Friday, April 13, 2012. See dkt. 82 at 1.

The Court already granted Microsoft's Motion to Dismiss the First Amended Complaint with prejudice, holding that Plaintiff's claims are barred by *res judicata*, see dkt. 39, and the Court entered judgment for Microsoft, see dkt. 40. Plaintiff filed an appeal. See dkt. 43. Moreover, Plaintiff filed a Request for Reconsideration of the Order granting Microsoft's Motion to Dismiss, dkt. 62, which the Court denied, see dkt. 63, and Plaintiff then filed a motion to vacate the Court's Order Denying his Request for Reconsideration,

1 see dkt. 67, which the Court also denied, see dkt. 78.

2 Accordingly, the Court has held, and repeatedly confirmed, that Microsoft is out of
3 this case. No further motion to dismiss is necessary. Microsoft's Motion to Dismiss is
4 therefore VACATED and the hearing on that Motion is also VACATED. The hearing on the
5 Motion to Dismiss filed by Defendants Gates and Ballmer, dkt. 83, will go forward on
6 Friday, April 13, 2012.

7 **IT IS SO ORDERED.**

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9 Dated: April 9, 2012



10 CHARLES R. BREYER

11 UNITED STATES DISTRICT JUDGE
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